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INFORMATION MEMORANDUM

To: State Agencies, Tribes, Tribal Organizations, and Territories
Administering Titles IV-B and IV-E

Subject: Foster Family Home Licensing Principles for Compliance with
Titles IV-B and IV-E Requirements: Guidance for States

**Legal and Related
References:** Sections 471(a)(10) of the Social Security Act (the Act); 45 CFR 1355.20;
45 CFR 1356.30

Background:

The Children’s Bureau has received numerous questions regarding the definition of a foster family home in 45 CFR 1355.20, which requires that the State’s foster care licensing standards be applied to all foster family homes for which it claims Federal financial participation. The requirement applies to each foster family home, regardless of whether it is a relative home or whether the State “licenses” or “approves” the home. Failure of the State to comply with this requirement will be considered a State plan compliance issue.

Rather than address each State’s differences in licensing and approval standards and the manner in which the standards are applied, we have listed below the general principles that will serve as guidance to the States and aid us in our decision-making about a State’s compliance.

Guidance:

- Per Federal law, States have the responsibility for establishing their own foster family home licensing or approval standards, so we have not defined the standards. Federal statute requires, however, that the following must be included in the State’s licensing or approval standards: admission standards, safety, sanitation, and protection of civil rights (section 471(a)(10) of the Act). We encourage States to develop and implement licensing standards that address other areas, as well.

- In addition to the areas noted above, States that do not opt out are required to conduct criminal record checks for any prospective foster or adoptive parent before the prospective parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under title IV-E (section 471(a)(20) of the Act and 45 CFR 1356.30). States that do opt out of the criminal records check requirement must document in the licensing file that safety considerations with respect to the foster or adoptive parent have been met.

- States may define their licensing standards as they see fit. From our discussions with State staff, we understand that there are two common ways to define licensing standards: Some States choose a detailed procedural approach, for example, requiring that foster parents have a medical examination that attests to their health and capacity for foster parenting. Other States choose to define standards more broadly as the *result* of certain procedures, for example, requiring that foster parents be determined in sufficiently good health to care for children placed in their home.
 - If a State has a detailed procedural approach, a State may limit the foster family home's ability to achieve the specific standard. For example, a State may have a licensing standard that requires that: *hot water delivered to faucets in the home be between 105 and 120 degrees Fahrenheit*. If an inspector find that the hot water temperature reaches a maximum temperature of 104 degrees, the foster family home would need to have the hot water adjusted to fall within the specific temperature to meet the standard.

 - On the other hand, if a State has a broadly defined licensing standard, it may allow different procedures for attaining the standard. For example, a State may have a licensing standard that requires that: *drinking water in the foster home not present a health hazard to the child*. If an inspector finds a prospective foster family home with tainted well water, because the standard is result-oriented, the State could allow the foster family home to meet the standard by treating the well water or by using bottled water. The Federal requirement is satisfied so long as the State applies to each foster family home the standard that it has adopted.

 - Another example of the difference in defining licensing standards is evident in the area of required training. If a State has the following licensing standard: *prospective foster parents must receive 50 hours of classroom training in subjects x, y and z*, there is little flexibility to develop a training curriculum that is responsive to a particular foster parent's strengths and weaknesses. Whereas a State's standard that: *prospective foster parents receive training that will adequately prepare them with appropriate knowledge and skills to provide for the needs of the children in their care*, provides the State with more discretion to tailor specific training curricula to the variety of foster parent needs.

- Whether a State defines its standards in a detailed procedural approach or in a broad, results-oriented approach, the State must apply those standards equally to all foster family homes, unless a waiver of a standard has been granted with respect to a particular relative foster family home.

- A waiver of a standard may be made only on a case-by-case basis, and applied only to non-safety standards in relative foster family homes for specific children in care. This policy is consistent with section 471(a)(19) of the Act, which requires States to consider giving preference to relative caregivers, provided that the relative caregiver meets all relevant State child protection standards. States must determine which of the standards are not safety-related.
- A State's use of different terminology (i.e., "licensing," "approval" or "certification") as applied to licensing relative or non-relative foster family homes will not affect compliance as long as the same standards are applied to all foster family homes.
- The licensing standards adopted by a State and used for all foster family homes should be clearly identifiable in some written format, such as State policy, regulation, statute, or licensing standards manual.

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